



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

**RECEIVED**

**JUN 17 2004**

ALLEGHENY COUNTY HEALTH DEPT.  
AIR QUALITY PROGRAM

VIA REGULAR U.S. MAIL

**JUN 14 2004**

Mr. Howard J. Wein, Esq.  
Klett Rooney Lieber & Schorling  
40<sup>th</sup> Floor, One Oxford Centre  
Pittsburgh, Pennsylvania 15219-6498

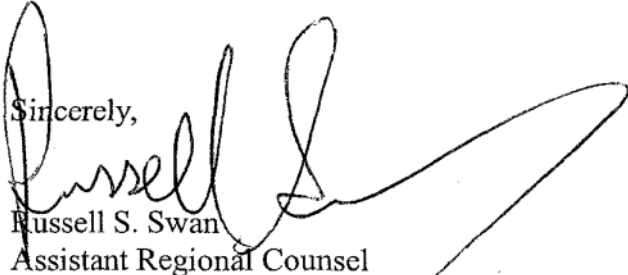
**Re: Administrative Compliance Order by Consent  
Docket No. CAA-03-2004-0225DA**

Dear Mr. Wein:

Enclosed, please find the final filed Administrative Compliance Order by Consent ("AOC"), Docket No: CAA-03-2004-0225DA. The AOC was signed by Judith Katz on June 10, 2004 and filed with the Regional Hearing Clerk on June 14, 2004. As requested, I am sending an electronic mail message to you and Mr. Glenn Truzzi at [Glenn.Truzzi@awin.com](mailto:Glenn.Truzzi@awin.com), notifying you both of the same.

Thank you for your cooperation in this matter. If you have any questions, I can be reached at (215) 814-5387.

Sincerely,

  
Russell S. Swan  
Assistant Regional Counsel

Enclosure

cc: Bruce Augustine  
Air Protection Division (3AP12)

Sandra Etzel, P.E.  
Allegheny County Health Department  
301 39<sup>th</sup> Street, Building #7  
Pittsburgh, PA 15201-1891

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

**In the Matter of:**

BFI Waste Systems of North America, Inc.  
11 Boggs Road  
Imperial, Pennsylvania

Respondent.

DOCKET NO: CAA- 03-2004-0225DA

**PROCEEDING UNDER:**

Sections 113(a)(3) and 114 of the  
Clean Air Act, 42 U.S.C.  
§§ 7413(a)(3) and 7414

**ADMINISTRATIVE COMPLIANCE ORDER BY CONSENT**

The purpose of this Administrative Compliance Order ("Order") is to ensure that BFI Waste Systems of North America, Inc. ("BFI" or "Respondent") is in compliance with the Standards of Performance for Municipal Solid Waste Landfills, 40 C.F.R. Part 60, Subpart WWW (the "Landfill NSPS"), promulgated pursuant to Section 111 of the Clean Air Act ("CAA" or the "Act"), as amended, 42 U.S.C. § 7411, at its Imperial Landfill, a municipal solid waste landfill located at 11 Boggs Road, Imperial, Pennsylvania (the "Facility").

**I. STATUTORY AUTHORITY**

This Order is issued pursuant to Sections 113(a)(3) and 114 of the Clean Air Act, 42 U.S.C. § 7413(a)(3) and 7414. Under Section 113(a)(3) of the Act, the Administrator of the United States Environmental Protection Agency ("EPA" or "the Agency") has the authority to issue Orders requiring persons to comply with the Standards of Performance for Municipal Solid Waste Landfills promulgated under Section 111 of the Act, 42 U.S.C. § 7411. Under Section 114 of the Act, the Administrator has the authority to require persons to establish and maintain records; to make reports; to install, use and maintain monitoring equipment and use audit procedures or methods; to sample emissions; to keep records on control equipment parameters, production variables, or other indirect data; to submit compliance certifications; and to provide such other information as the Administrator may reasonably require for the following purposes: to develop implementation plans, standards of performance, emission standards, or regulations for solid waste combustion; to determine compliance with such standards; or to carry out any provision of the CAA. The Administrator has delegated his authority to issue Orders within the

geographical jurisdiction of EPA Region III to the Regional Administrator of EPA Region III, and the Regional Administrator has re-delegated this authority to the Director of Region III's Air Protection Division. The geographical jurisdiction of EPA Region III includes the Commonwealth of Pennsylvania

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. BFI owns and operates the Imperial Landfill located at 11 Boggs Road, Imperial, Pennsylvania where it is engaged in the business of land filling municipal solid waste.
2. Respondent is a "person" as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).
3. Pursuant to 40 C.F.R. § 60.750(a), an affected facility is a municipal solid waste landfill that commenced construction, reconstruction or modification on or after May 30, 1991.
4. Pursuant to 40 C.F.R. § 60.751, "municipal solid waste landfill" or "MSW landfill" means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land.
5. Imperial Landfill is a municipal solid waste landfill as defined by 40 C.F.R. § 60.751.
6. Imperial Landfill began accepting waste at least since the 1950s.
7. The Imperial Landfill consists of cells 1A, 1, 2, 3, 4, 5, 6, and 7.
8. On October 1, 1998, the Imperial Landfill received an approval for revisions to the final elevations and an increase in the disposal capacity of Cell 7. Imperial Landfill's Title V Permit Application, which was revised and submitted to the Allegheny County Health Department ("ACHD") on September 27, 2000, incorporates this approved design modification. BFI subsequently expanded the Imperial Landfill.
9. The Imperial Landfill expansion and volume increase constituted a "construction, reconstruction or modification after May 30, 1991" as that phrase is used in 40 C.F.R. § 60.750(a).
10. Imperial Landfill is an affected facility as defined by 40 C.F.R. § 60.2 and designated by 40 C.F.R. § 60.750(a).

11. Pursuant to 40 C.F.R. § 60.2, "owner or operator" means any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which the affected facility is a part.
12. BFI is an owner or operator as defined by 40 C.F.R. § 60.2.
13. Pursuant to 40 C.F.R. § 60.752(b), each owner or operator of an MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and a nonmethane organic compound ("NMOC") emission rate of 50 megagrams per year or greater shall design, install and operate a landfill gas collection and control system in accordance with § 60.752(b)(2).
14. The design capacity of the Imperial Landfill is greater than 2.5 million megagrams and 2.5 million cubic meters.
15. The Respondent's NMOC emission rate at the Imperial Landfill is in excess of 50 megagrams per year.
16. Respondent designed, installed and operates a landfill gas collection and control system at its Imperial Landfill.
17. Pursuant to 40 C.F.R. § 60.752(b)(2)(iv), Respondent must operate the landfill gas collection and control system in accordance with §§ 60.753, 60.755 and 60.756.
18. Pursuant to 40 C.F.R. § 60.753(d), landfill gas collection systems must be operated so that the methane concentration is less than 500 parts per million above background at the surface of the landfill (the "surface methane operational standard").
19. Pursuant to 40 C.F.R. §§ 60.753(d) and 60.755(c)(1), compliance with the surface methane operational standard is determined by monitoring the surface concentration of methane around the perimeter of the collection area, along a pattern that traverses the landfill at 30 meter intervals, and where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover.
20. BFI operates a leachate collection system at the Imperial Landfill which includes a system of sumps, piping, and risers.
21. On June 18, 2003, duly authorized representatives of EPA inspected the Imperial Landfill for compliance with the CAA New Source Performance Standards ("NSPS") for Landfills, 40

C.F.R. Part 60, Subpart WWW.

22. Based on information obtained from BFI during the June 18, 2003 inspection and BFI's quarterly monitoring report submitted to EPA on July 30, 2003, EPA determined that BFI has never monitored the uncapped sections of cell 7 of the waste disposal area of the landfill.

23. During the June 18, 2003 inspection, EPA inspectors detected numerous exceedances of the surface methane operational standard within sections of Cells 1 and 7 ranging between 600 and 5000 ppm.

24. BFI has advised EPA that after the June 18, 2003, EPA inspection, it modified its surface methane monitoring plan to include all areas required by 40 C.F.R. §60.753(d), though it did not reduce the plan to writing.

25. BFI has advised EPA that since it has implemented its plan, BFI has conducted three (3) quarters of monitoring and further has advised EPA that it is currently in compliance with the requirements in 40 C.F.R. § 60.753(d) and 755(c)(1).

26. BFI has advised EPA that it will prepare a revised surface monitoring plan and map, detailing the new monitoring route, which will be submitted in accordance with paragraph 33 of this Order.

27. Pursuant to 40 C.F.R. § 60.753(d), landfill gas collection systems must be operated so that the methane concentration is less than 500 parts per million above background at the surface of the landfill (the "surface methane operational standard").

28. By failing to specifically monitor the surface concentration of methane at the uncapped sections of Cell 7 of the landfill that are located within the perimeter of the waste disposal area and for which a landfill gas collection and control system is required, BFI failed to comply with the surface monitoring requirements of 40 C.F.R. §§ 60.753(d) and 60.755(c)(1).

### **III. ORDER TO COMPLY**

EPA hereby issues this Order to address the alleged violations of the Landfill NSPS in Section II. Findings of Fact and Conclusions of Law. BFI Imperial Landfill does not admit nor deny the findings of fact and conclusions of law above. Nevertheless, BFI Imperial Landfill agrees to undertake the actions specified below:

29. Beginning the Second Quarter of 2004, BFI shall conduct at the Imperial Landfill surface monitoring pursuant to 40 C.F.R. §§ 60.753(d) and 60.755(c)(1), by monitoring the surface concentration of methane:

- a. around the perimeter of the collection area;
- b. along a pattern that traverses the landfill at 30 meter intervals; and
- c. where visual observations indicate elevated concentrations of landfill gas.

30. Surface monitoring pursuant to 40 C.F.R. §§ 60.753(d) and 60.755(c)(1) shall be conducted in each active area of the landfill which has had waste in place for at least five years and each section of the landfill with waste in place for two years which is closed or at final grade.

31. Beginning the Second Quarter of 2004, BFI Imperial Landfill shall submit its quarterly Surface Methane Monitoring Reports to EPA and to ACHD. BFI shall also submit quarterly Surface Methane Monitoring Reports for the Imperial Landfill to EPA and ACHD for the Third Quarter of 2004, the Fourth Quarter of 2004, and the First Quarter of 2005.

32. For any detected exceedance of the 500 parts per million surface methane operational standard at the Imperial Landfill, BFI shall take corrective action in accordance with 40 C.F.R. §§ 60.755(c)(4)(i)-(v).

33. Within thirty (30) days of the effective date of this Order, BFI shall submit to ACHD, with a copy to EPA, a revised surface monitoring plan and map detailing the new monitoring route as a federally applicable requirement to be incorporated in the Title V operating permit for the Imperial Landfill.

#### **IV. PARTIES BOUND**

34. This Order shall apply to and be binding upon Respondent, its agents, successors, and assigns and upon all persons, contractors and consultants acting under or for the Respondent, or persons acting in concert with Respondent who have actual knowledge of this Order or any combination thereof with respect to matter addressed in this Order. No change in ownership or corporate or partnership status will in any way alter the status of the Respondent or its responsibilities under this Order.

35. No change in ownership of the Facility or any property covered by this Order shall in any way affect Respondent's obligations and responsibilities under this Order.

36. In the event of any change in ownership or control of the Facility, Respondent shall notify EPA in writing at least thirty (30) days in advance of such change and shall provide a copy of this Order to the transferee-in-interest of the Facility, prior to any agreement for transfer.

37. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories and consultants retained to conduct or monitor any portion of the Order to Comply portion of this Order, and shall condition all such contracts on compliance with the terms and conditions of this Order.

#### **V. RESPONSES TO ORDER**

38. Information required to be submitted to EPA under this Order must be sent to:

Bruce J. Augustine  
Air Protection Division (3AP12)  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2131

Copies shall be sent to:

Russell S. Swan  
Assistant Regional Counsel  
Office of Regional Counsel (3RC10)  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-5387

39. Information required to be submitted to the Allegheny County Department of Health under Section III (Order to Comply) of this Order must be sent to:

Mr. Najeeb Basher  
Air Quality Engineer  
County of Allegheny Health Department  
301 39<sup>th</sup> Street, Building. 7  
Pittsburgh, PA 15201-1891

## **VI. EFFECT OF COMPLIANCE ORDER**

40. The compliance measures ordered herein address the violations alleged in Section II. Findings of Fact and Conclusions of Law only. As set forth in Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), nothing in this Administrative Compliance Order shall prevent EPA from assessing any penalties, or otherwise affect or limit the United States' authority to enforce other provisions of the CAA, or affect any person's obligations to comply with any Section of the CAA, or with any regulation, term or condition of any permit, or applicable implementation plan promulgated, issued or approved under the CAA. Further, nothing in this Order shall limit or otherwise preclude the United States from taking criminal or additional civil judicial or administrative enforcement action against the Respondent or any third parties with regard to the Facility pursuant to any federal or state law, regulation or permit condition. Nothing in this Order shall limit or otherwise preclude the United States from taking criminal or additional civil judicial or administrative enforcement action against the Respondent for Respondent's failure to comply with any of the requirements of this Order.

## **VII. ENFORCEMENT**

41. Failure to comply with this Order may result in a civil judicial action for an injunction and/or civil penalties of up to \$27,500 per day of violation, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, *et seq.*, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, *et seq.*, and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Parts 19 and 27. EPA retains full authority to enforce the requirements of the Act, 42 U.S.C. 7401-7642, and nothing in this Order shall be construed to limit this authority.

## **VIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

42. Respondent has exercised its opportunity to confer in negotiating this Order. This Order shall be effective five (5) days after receipt by Respondent.

43. Any reports, plans, specifications, schedules, or other submissions required by this Order are, upon acceptance by EPA, incorporated into this Order. Any non-compliance with such EPA-accepted reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Order. Determinations of non-compliance will be made by EPA.

44. No informal advice, guidance, suggestions or comments by EPA or ACHD regarding reports, plans, specifications, schedules, or other submissions by the Respondent or the requirements of this Order will be construed as relieving the Respondent of its obligation to obtain formal acceptance when required by this Order, and to comply with the requirements of this Order unless formally modified.

45. This Order may be modified or amended in writing by the Regional Administrator of EPA Region III (or delegate of the Regional Administrator). Such modifications or amendments shall be effective on the date they are signed by the Regional Administrator (or delegate thereof) or such other date as set by the Regional Administrator (or delegate thereof). Minor modifications to the Order to Comply, and/or the schedule may be approved by the EPA Officials specified in paragraph 38.

#### **IX. CALCULATION OF TIME**

46. Any reference to "days" in this Order shall mean calendar days, unless otherwise specifically provided herein. Any reference to "business days" shall mean every day of the week except Saturdays, Sundays and federal holidays.

#### **X. FAILURE TO PERFORM/PERFORMANCE EVENTS**

47. In the event of an inability or anticipated inability on the part of Respondent to perform any of the actions required by this Order in the time and manner required herein, the Respondent shall notify EPA orally within twenty-four (24) hours of such event (or, if the event occurs on a Friday or Saturday, Sunday, or legal holiday, no later than the following business day) and in writing as soon as possible, but in no event more than three (3) days after such event. Such notice shall set forth the reason(s) for, and the expected duration of, the inability to perform; the actions taken and to be taken by Respondent to avoid and mitigate the impact of such inability to perform; and the proposed schedule for completing such actions. Such notification shall not relieve Respondent of any obligation of this Order. Respondent shall take all reasonable actions to prevent and minimize any delay.

48. Failure by Respondent to carry out any requirement of this Order in accordance with the terms and conditions specified herein may result in the initiation of an enforcement action against Respondent to require Respondent to perform such actions, in addition to any other relief that may be available to EPA pursuant to applicable law.

49. Nothing in this Section or any other provision of this Order shall be construed so as to limit any powers EPA may have under the CAA or any other law or regulation, nor shall they be construed so as to limit any defenses Imperial Landfill may have under the CAA or any law or regulation..

#### **XI. SEVERABILITY**

50. If any provision or authority of this Order, or the application of this Order to any party or circumstances, is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in full force and not be effected thereby.

#### **XII. TERMINATION AND SATISFACTION**

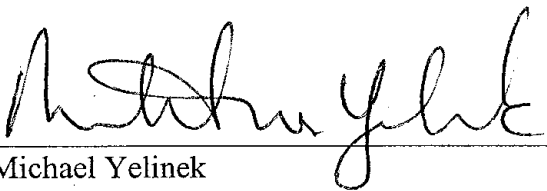
51. The provisions of this Order shall be deemed terminated upon issuance of a Title V operating permit by ACHD containing the requirements of Section III, Order to Comply. Termination of this Order shall not, however, terminate Respondent's obligation to comply with any continuing obligations of any federal, state or local law, statute, ordinance, rule or regulation, and all continuing obligations shall continue as they did before the termination of the Order.

#### **XIII. COPIES OF ADMINISTRATIVE ORDER**

52. Copies of this Order will be provided to: Ms. Sandra Etzel, P.E., Allegheny County Health Department, 301 39<sup>th</sup> Street, Building #7, Pittsburgh, PA 15201-1891

FOR BFI Waste Systems of North America, Inc.

DATE: 5-21-04

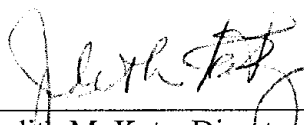
  
\_\_\_\_\_  
Michael Yelinek  
District Manager  
BFI Waste Systems of North America, Inc.

*In the Matter of:*  
*BFI Waste Systems of North America*  
*Docket No: CAA-03-2004-0225DA*

*Administrative Compliance Order by Consent*

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

DATE: 6/10/04

  
\_\_\_\_\_  
Judith M. Katz, Director  
Air Protection Division  
U.S. EPA, Region III

## CERTIFICATE

The undersigned certifies that she is the duly elected, qualified and acting Secretary of **BFI WASTE SYSTEMS OF NORTH AMERICA, INC.**, a Delaware corporation (the "Corporation") and that attached hereto as Schedule A is a true and correct copy of resolutions duly adopted by the Board of Directors of the Corporation, and that such resolutions have not been amended or rescinded and are in full force and effect on the date hereof.

Dated: May 18, 2004.

  
\_\_\_\_\_  
Jo Lynn White  
Secretary

## **SCHEDULE A**

**WHEREAS**, an Administrative Compliance Order By Consent (" Order") has been issued by the United States Environmental Protection Agency (" USEPA") in the Matter of BFI Waste Systems of North America, Inc. (" Respondent"), Imperial Landfill, 11 Boggs Road, Imperial, Allegheny County, Pennsylvania, DOCKET NO: CAA-03-2004-0225DA, the purpose of which is to ensure the respondent is in compliance with the Standards of Performance for Municipal Solid Waste Landfills;

**RESOLVED**, that the Corporation, as the Respondent, is hereby authorized to execute the Order, substantially in the form presented to the Corporation, with such changes as may be approved by the officers or such other persons authorized to execute same and such actions are hereby approved, adopted, ratified and confirmed;

**FURTHER RESOLVED**, that the Corporation is hereby authorized and directed to execute and deliver the Order and such other documents, exhibits, agreements or attachments necessary in connection with submission of Order and in connection with the Corporation' s obligations and agreements as set forth therein;

**FURTHER RESOLVED**, that **MICHAEL W. YELINEK**, as District Manager and Authorized Agent for the Corporation, or any officer of the Corporation, is hereby authorized and directed to execute and deliver the Order to the USEPA and to execute any and all other documents on behalf of the Corporation required by the UESPA in connection with submission of the Order and in connection with the performance of the Corporation' s obligations and agreements as set forth therein; and

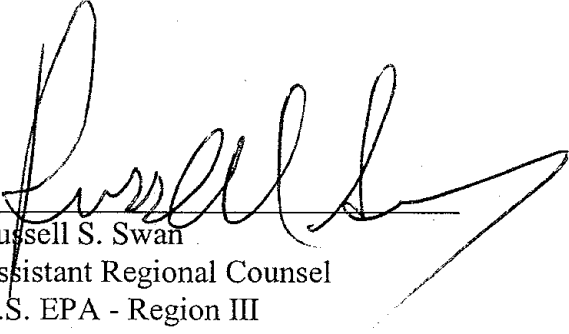
**FURTHER RESOLVED**, that the Secretary, or any other officer of the Corporation, is hereby authorized to certify to the adoption of the foregoing resolutions as may be required.

## Philadelphia, Pennsylvania 19103-2029

Mr. Howard J. Wein, Esq.  
Klett Rooney Lieber & Schorling  
40<sup>th</sup> Floor, One Oxford Centre  
Pittsburgh, Pennsylvania 15219-6498

Date: \_\_\_\_\_

6/14/04

  
\_\_\_\_\_  
Russell S. Swan  
Assistant Regional Counsel  
U.S. EPA - Region III